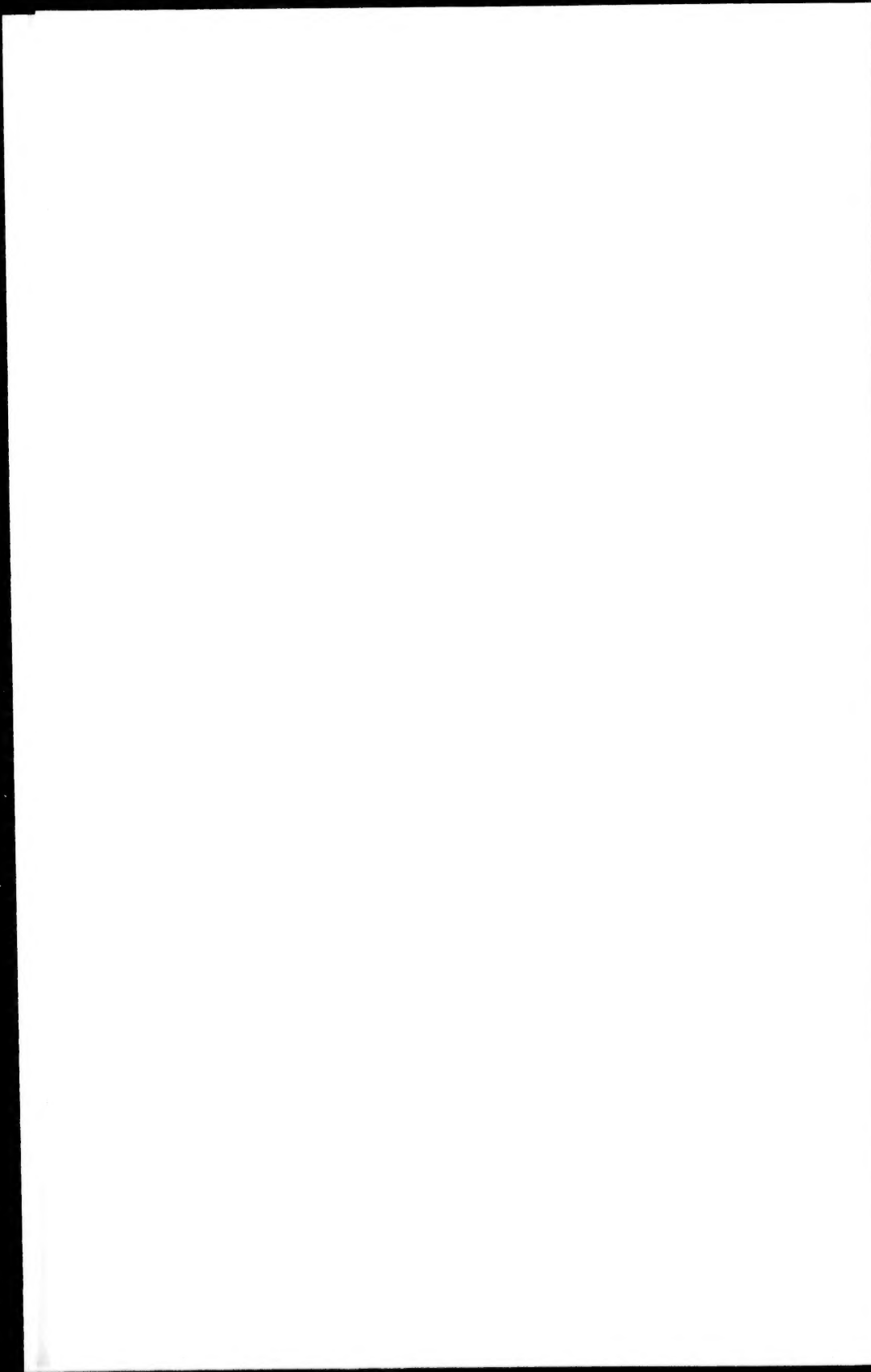




LETTERS
ON THE
BOUNDARY LINE,

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LETTERS

ON THE

Boundary Line.

NO. I.

14th November, 1827.

THE subject of the Western Boundary Line of this Province, has lately occupied much of the public attention, and not more than its importance deserves. It may be asserted that the future safety of these North American Colonies, is deeply involved in the decision of the question now in discussion between the Government of the Mother Country and that of the United States, relating to that point of the Boundary, which is called in the Treaty of 1783, *the North West Angle of Nova-Scotia*; their immediate interests and convenience are eminently so. I have read several late articles on this topic, in the American newspapers, especially in those of the State of Maine, where the Question seems to produce much excitement. I have also read such publications in support of the British Claims, as have come to my hands, and I have been induced to devote some leisure hours to a consideration of the subject.

THE questions relating to this Boundary, have arisen under the second article of the Treaty of 1783, the instrument by which the Crown of Great-Britain relinquished its rights of territory and government over the thirteen revolted Colonies, then acknowledged as an Independent Power, and by which, in order, as the Treaty expresses it, to prevent all disputes which might arise on the subject of their Boundaries, those Boundaries are expressly agreed upon and declared. The second article of the Treaty designates them thus—"FROM the North West Angle of Nova-Scotia, to wit, "that Angle which is formed by a line drawn due North from the "source of St. Croix River to the *Highlands*, along the said High- "lands which divide those Rivers that empty themselves into the "River St. Lawrence from those which fall into the *Atlantic Ocean*, "to the North Westernmost head of Connecticut River." Then follow the Boundaries through the interior of the Country, which

are not material to the present question. The Southern Boundary is terminated by a line "down along the middle of St. Mary's River to the *Atlantic Ocean*"; and is followed by the Eastern Boundary, thus—"East by a line to be drawn along the middle of the River St. Croix, from its mouth in the *Bay of Fundy*, to its source, "and from its source directly North to the aforesaid *Highlands*, "which divide the Rivers that fall into the *Atlantic Ocean* from "those which fall into the *River St. Lawrence*, comprehending all "Islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due East from the "points where the aforesaid Boundaries between Nova-Scotia on "the one part, and East Florida on the other, shall *respectively* touch "the *Bay of Fundy* and the *Atlantic Ocean*, excepting such Islands "as now are or heretofore have been within the limits of the said "Province of Nova-Scotia."

THE next year after this Treaty was concluded, viz : in the year 1784, a part of the ancient Province of Nova-Scotia, bordering on the United States, was erected into this Province of New-Brunswick, and settlements were made by the King's subjects at St. Andrews, and on the River Schoodic, as being the St. Croix, and the Boundary River of the Treaty. The Americans soon set up a claim to the River Magaguadavic, as the St. Croix, and the Treaty of Amity, Commerce and Navigation, made in the year 1794, commonly called in the United States, Jay's Treaty, provided for settling this question by a Board of Three Commissioners. By the provisions of this Treaty, one Commissioner was to be appointed by each Government, and the two Commissioners so appointed, were to agree in the choice of a third, or if they could not agree, each was to propose one person, and of the two names so proposed, one was to be drawn by lot in the presence of the two original Commissioners. In this instance, the two original Commissioners* did agree in the choice of a third,† a Judge of the Supreme Court of the State of New-York, and a man whose character stood high for talents and integrity, it being probably thought more advisable by the British Commissioner to select by mutual choice an individual, whose character was known to him, although a citizen of the United States, than to trust the nomination of a third Commissioner, and thus, in all probability, the decision of the controversy entirely to chance. This was in the year 1796. The discussions before these Commissioners were continued until the autumn of 1798, the Magaguadavic being throughout most strenuously insisted upon as the true River St. Croix, on the part of the United States. The result in the first instance, was at the time well understood to be, that the third Com-

* Thomas Barclay, Esq. on the part of his Majesty, and David Howell, Esq. on the part of the United States.

† Egbert Benson, Esq.

missioner, who was in fact the umpire, expressed himself satisfied that the British claim had been fully established to the River Schoodic, as the River St. Croix, truly intended by that name in the Treaty of 1783, and to the Western branch of that River as the Trunk or Main River, the original American Commissioner expressing himself to be of a different opinion. The third Commissioner, however, placed the source of the River, which the Treaty required to be particularized, at the mouth of the Easternmost of the Schoodic Lakes, where he seems to have considered it as losing the form of a River. This point is situate between five and six miles above the confluence of the Cheputnaticook with the Main River, and on a meridian several miles to the Eastward of the source of the Cheputnaticook. In this state of things, it was proposed by the American Agent, by way of accommodation, to adopt the extreme Northern source of the Cheputnaticook or Northern branch of the Schoodic, as the source of the St. Croix. The inducement to this proposal, on his part, was said to be to save to the State of Massachusetts, certain Grants of Land that had been made by that State, between the Western and Northern branches of the Schoodic; and as this proposal placed the source of the St. Croix on a meridian considerably to the Westward of the point named as the source of the River by the third Commissioner, it was acceded to on the part of his Majesty, and brought about what was evidently a very desirable object, an unanimous decision of the three Commissioners, who accordingly by their declaration,* established the River Schoodic and the Northern branch of that River to its source, as the River St. Croix, truly intended in the Treaty of 1783. The declaration of these Commissioners is thus spoken of by the President of the United States, in his Speech to Congress, December 8th, 1798—"This decision, it is understood, will preclude all contention among individual claimants, as it seems that the Schoodic and its Northern branch bound the grants of lands which have been made by the respective adjoining Governments."

I have been thus particular in the history of the decision with regard to the River St. Croix, which was a matter of notoriety at the time, and it is reasonable to suppose may be substantiated by documents in the hands of those officially connected with the transaction, because the writers in the State of Maine, in a spirit by no means liberal or magnanimous, speak of it, as one in which an advantage was obtained over the United States, and make a merit of the States of Maine and Massachusetts, having quietly submitted to it. Whereas, if National controversies are to be weighed in the same narrow scales as the disputes of obstinate litigants in a municipal

* This declaration is to be found at large in Mr. Atcheson's book "on the conduct of the United States," published in London in 1808, appendix, p. 97.

court, the advantage may be fairly said to lie on the part of the United States, for it appears to me that the course pursued by the Commissioners under the Treaty of 1794, with regard to the source of the St. Croix, is clearly erroneous, upon the principle which establishes the River itself to be the true St. Croix.

THAT principle is shortly this—the River St. Croix mentioned in the Treaty of 1783, is a River, a due North line from the source of which, forms one side of the North West Angle of Nova-Scotia, and therefore was a part of the Western Boundary of that Province. The River which was a part of the Western Boundary of Nova-Scotia, is the River intended by the name of the St. Croix, in the original erection of that Province, by the Grant of King James the First to Sir William Alexander, in the year 1621, and in that Grant described thus—“The River commonly called by the name of *Saint Croix*, and to the most remote spring or fountain from the Western part of the same, which first mingles itself with the aforesaid River.”* The River thus described in this Grant to Sir William Alexander, is the River called St. Croix by the first French voyagers there in the year 1604.† The particular and minute description given by these Voyagers of the River, which they called St. Croix, and especially of a small Island in the mouth of that River, on which they wintered, correspond exactly with the River Schoodic, and a small Island in the mouth of that River, a short distance above St. Andrews, called by the French ISLE ST. CROIX, since called Bone or Docea's Island, on which Island were found in the year 1796, and probably exist to the present day, indubitable traces of the habitations described with such minute particularity by the French historians of the voyage of 1604; and the description of these historians will correspond with no other River or Island in that neighbourhood.—The River Schoodic is therefore the River intended in the Grant

* “Ad fluvium vulgo nomine Sanctæ Crucis appellatum, et ad scaturiginem remotissimamque fontem ex occidentali parte ejusdem qui se primum prædicto fluvio immiscet.”

† That the River called St. Croix, in Sir Wm. Alexander's patent, is the St. Croix of De Mont's in 1604, appears from the following extracts from a publication by Sir Wm. Alexander, in London in 1621, under the title of “Encouragement to Colonies” :—

“Monsieur de Mont's procuring a patent from king Henry the Fourth, of Canada, from the 40th degree Eastward, comprehending all the bounds that now is between New-England and New-Scotland, after that Queen Elizabeth had formerly given one thereof, as belonging to this Crown by Cabot's discoveries, did set forth with a hundred persons, fitted for a plantation, carried in two ships.” He relates the voyage from France to Port Royal, (now Annapolis Royal) and proceeds, “And thus having seen Port Royal, they went to the River called by them *Sainte Croix*, but more fit now to be called *Tweed*, because it divides New-England and New-Scotland, bounding the one of them upon the East, and the other upon the West side thereof, here they make choice of an Isle, that is within the middle of the same, where to winter, building houses sufficient to lodge their number.”—He concludes his relation by mentioning, “That in the end, finding that a little Isle was but a large prison, they resolved to return unto Port Royal.”—Speaking of the limits of his patent, he says, “Leaving the limits to be appointed by his Majesty's pleasure, which are expressed in the patent granted unto me under his great seal of his kingdom of Scotland, marching upon the West towards the River of *Sainte Croix*, now *Tweed*, (where the Frenchmen did design their first habitation) with New-England, and in all other parts it is compassed by the Ocean and the Great River of Canada.”

to Sir William Alexander, as a Western boundary of Nova-Scotia, and, if so, by the description in the Grant, should be followed as a boundary to its *most Western source*, or spring, which, according to the principle, would be the true boundary of the treaty of 1783. But as a measure of accommodation suggested by the person to whom the management of this matter was entrusted by the United States, and acquiesced in by all parties, the source of the St. Croix was fixed at a point on a meridian several miles to the Eastward of the source designated in the original delineation of the Western boundary of Nova Scotia, and is therefore in so far an advantage to the United States.

Now I cannot think that this designation of the source of the River St. Croix by the Commissioners under the 5th article of the treaty of 1791, can be defended upon the principles which must demonstrably have governed their decision. And His Majesty's subjects in this quarter would be well justified in complaining of it, if it had not been yielded to for the purpose of preventing a more unfavourable result according to the original decision of the umpire in the selection of a point lying on a meridian several miles further to the Eastward as the source of the River, and if its effect on the interior boundary were of material moment. But the fact is, that if the most Western source of the Schoodic had been decided to be the source of the St. Croix under the treaty, it would have carried the line running due North from that point only about ten miles further to the Westward, and if the River Saint John is to be crossed by this due North line, according to the claim set up by the Americans in the controversy now subsisting, such line from the most Western source of the Schoodic would have crossed the St. John about fourteen miles above the Great Falls, and as to its pernicious operation as a line of boundary, would not vary substantially from a North line run from the Monument at the source of the Cheputnaticook.

BUT say the American writers, the St. Croix intended by the Treaty of 1783, is not the St. Croix of Sir William Alexander's grant in 1621, nor the St. Croix so named by the Sieur de Monts in 1604, but the river marked by that name on Mitchell's Map, which Map was before the Commissioners who negotiated the treaty of Paris in 1783, and the River marked on that Map as the St. Croix, is the next great River Westward of the Saint John, and is clearly the Magaguadavic.

THIS Map of Mitchell was published in the year 1755, prior to the erection of the Province of Quebec and the introduction of *Highlands* as a Northern boundary of these sea-board Provinces in the year 1763. This Map as it regards the Bay of Passamaquoddy and the Rivers issuing into it is evidently erroneous and imperfect ; so much so, that I will confidently assert that not one of the rivers,

or the islands in this bay, would be known with certainty, from a comparison of the delineation of them on the map, with the natural objects as they exist. But there is a characteristic of the river which the Compiler of this Map calls the St. Croix, not to be mistaken, and that is a line of boundary traced along the Western side of the River and the Lake at the source of the River, and along the Northernly side of the Lake to the most Northern part of it; and thence in a North course to a small river, the St. Barnabas, emptying into the St. Lawrence, on one side of which line the Country is called NEW-ENGLAND, and on the other NOVA-SCOTIA.* Now, in the grant of 1621, to Sir William Alexander, the boundary of Nova-Scotia is continued from the source of the St. Croix as before quoted "by an imaginary direct line which may be conceived to go "over the land or run towards the North to the nearest bay river "or spring discharging itself in the great river of Canada."† There can be no doubt then that the Boundary Line thus traced on Mitchell's map indicates what was at that time esteemed to be the boundary of Nova-Scotia from the mouth of the St. Croix to the St. Lawrence, and this boundary is the boundary described in Sir William Alexander's grant. If then the river called St. Croix in Sir William Alexander's grant is the river so called by the French in 1604, and this river is demonstrably, unless the face of nature be changed, the Schoodic,—the proof is perfect, that the Schoodic is the river intended by the name of St. Croix in Mitchell's map.

It is worthy of remark also that there is a river marked on this map on the Eastern side of Passamaquoddy Bay, probably intended for the Magaguadavic, which it is also probable, in consequence of the falls so near its mouth, had not then been explored, and so its size and extent were not then known.‡

SIMILAR considerations might be applied to prove that in all the authentic maps published from the time of the original erection of the Province of Nova-Scotia in 1621, to the peace of 1783, the River called St. Croix is intended to be the River originally designated as the Western boundary of that Province under that name.

It is acknowledged that the discussion of this point is not now of any practical importance, because it is definitively settled by the declaration of the Commissioners under the 5th article of the Treaty of 1794, and all parties must abide by that decision. I have deemed

* See an extract from this Map in Mr. Atcheson's book "on the conduct of the United States," appendix, p. 16. It is to be observed, however, that this extract does not contain the names NEW-ENGLAND and NOVA-SCOTIA on the respective sides of the line drawn from the St. Croix to the St. Lawrence, as the original map does.

† "Unde per imaginariam directam lineam quæ pergere per terram seu currere versus "septentrionem concipietur ad proximam navium stationem fluvium vel scaturiginem in magne "fluvio de Canada sese exonerantem."

‡ The name of "Carriage Harbor" is annexed to this River on the map, a name probably arising from the Portage at the Falls of the Magaguadavic.—A similar River is laid down on some French Maps published before Mitchell's, and called *Port de Portages*.

it necessary to advert to it, only because I do not think it right that our adversaries on this question of boundary, I mean the inhabitants of the State of Maine, should be suffered to hold out to the world uncontradicted, that an advantage has been gained over them in the settlement of this part of the boundary, thereby clearly implying that justice has not been done to them ; whereas, if my views be correct, the true line of justice would have been the Western or main branch of the River Schoodic, to its most Western source.

I shall proceed in my next letter to offer some remarks on the point now in dispute, with regard to the boundary in the interior of the country.

VERAX.

NO. II.

21st November, 1827.

I am aware that the question relating to the North West Angle of Nova-Scotia, may be considered as pending for judicial decision, under the provisions of the 5th Article of the Treaty of Ghent. This Treaty abandons the course pursued in the Treaty of 1794, for the nomination of a third Commissioner, and in the case of a disagreement in opinion between the two Commissioners, appointed by the respective Governments, provides for a reference to a friendly Sovereign or State, to be then agreed upon, as an Umpire. This reference, if I am correctly informed, has not yet been made ; the two Governments, having been endeavouring since the disagreement of the Commissioners, to settle the matter by negotiation. Here the people of Maine and Massachusetts start a difficulty upon the Constitution of the United States, that the General Government of the Union has no right to cede in a negotiation with a Foreign Power, either by way of compromise, or otherwise, any Territory of an individual State, without the consent of that State ; and some writers even hold out, without the consent of all the States, as they all have an interest in the integrity of the whole Territory, comprised within the Union. It would seem, therefore, that from the peculiarity of the Constitution of the United States, for this Nation, prolific in expedients, ever finds some peculiarity to answer its wishes, that the individual States would not be bound by any compact of the General Government, varying the line of Boundary prescribed in the Treaty of 1783. A decision of an Umpire under the provisions of the Treaty of Ghent, giving a construction to the Treaty of 1783, and thereby definitively ascertaining the limits mentioned in this Treaty, would, I suppose, for I am but little versed

in the mysteries of a Federal Constitution, be deemed binding on all the Sovereignities of the United States. It seems therefore probable, that after all, this course must be pursued. Such being the case, I should not have thought of publishing any remarks on this question at this time, had it not been for the repeated publications which have lately appeared in the newspapers of the State of Maine. Our opponents having endeavoured, in a most confident tone, to pre-occupy public opinion, in their favour, a continued silence on our part might be construed into an admission that we have nothing to say for ourselves. Under these circumstances it will not, I trust, be deemed presumptuous in a private individual, to examine into and make known some of the reasons which may be given for the faith we profess with regard to this very important part of the Boundary.

THE American writers, in their reasonings on the subject of the North West Angle, throw the gauntlet, primarily, on the construction of the Treaty of 1783, taken by itself, without reference to any anterior designation of Boundary by the King or Parliament of Great Britain, while the whole Country was under British dominion. Let us accept the challenge, and see what battle we can make, confining ourselves to the terms made use of in the Treaty, and the obvious and declared views and intentions of the framers of it.

WE will first consider *the claim of the United States* in reference to the *terms* of the Treaty, which it is contended on their part are so plain in their favour, that he who runs may read.

THIS claim, as I understand it, places the North West Angle of Nova-Scotia at a point in the line running due North from the source of the St. Croix, situate on the lands which lie between a branch of the River Restigouche and the River Metis, the latter being a River falling into the River St. Lawrence. This point is about 140 miles distant from the source of the St. Croix, and about 60 miles from the place where the line is made to cross the River St. John, and the line in its course thither crosses the Main River Restigouche and several branches of it, as well as the River St. John.

ACCORDING to this claim then, the requisite *Angle* is formed by the intersection of the due North Line, by a line running between the sources of the various streams, which fall into the River St. Lawrence, and the waters of the Restigouche, the St. John, the Penobscot, the Kennebeck, and the Androscoggin, to the North Westernmost head of Connecticut River.

THE expressed object of the Treaty is to define "the Boundaries of the *United States*," and to do this in such a way "that all "disputes which might arise in future on the subject of them may be prevented";—and, as I shall hereafter have occasion to remark, the original form and framing of the Article containing these Boun-

daries, may be traced to the old Congress itself. According to this expressed object, great care appears to have been taken to specify the several parts of the sea and land, to which there was occasion to allude, by their appropriate names, so as to distinguish them from each other, and to prevent any of them from being included within more general terms of description, which it might be attempted to apply to them.

THUS we find the *Bay of Fundy* to be expressly distinguished from the *Atlantic Ocean*. The mouth of the River St. Croix, one extreme point of the Sea-board Boundary of the United States, is expressed to be in "the Bay of Fundy"; the mouth of St. Mary's River, the other extreme point of the same Sea-board Boundary, is expressed to be in "the Atlantic Ocean." In the clause respecting Islands, the same points of Boundary are spoken of as "*respectively*" touching "the Bay of Fundy and the Atlantic Ocean." Can there be a more clear contradistinction of terms than this? Are not the names "Bay of Fundy" and "Atlantic Ocean" made use of to denote different parts of the Sea? If the framers of the Treaty had considered the Bay of Fundy as *included* in the Atlantic Ocean, would they not have spoken of these points of Sea-board Boundary, as "*respectively* touching the *Atlantic Ocean*" alone?

AGAIN, in the third Article of this Treaty, relating to the Fisheries, the *Gulph of St. Lawrence* is called by its appropriate name, and distinguished from other parts of the sea.

LET it not be said that this distinction between the *Atlantic Ocean*, and the *Bay of Fundy*, and the *Gulph of St. Lawrence*, is merely arbitrary and fanciful. On the contrary, it is conformable to common usage, and to the uniform tenor of maps, charts, and topographical writings. The Bay of Fundy, in some old maps, is called *Argal's Bay*, in consequence of Sir Samuel Argal's expedition to it in 1613; in others, made by the French, it has the appellation of *Baie Française*; in all modern authorities it is called by its present English name; but it is uniformly distinguished from the Atlantic Ocean. The Gulph of St. Lawrence is uniformly designated by this its appropriate name. In Mitchell's Map, held up by the Americans as a ruling authority, as having been before the Commissioners who negotiated the Treaty of 1783, we find the *River St. Lawrence*, the *Gulph of St. Lawrence*, the *Bay of Fundy*, and the *Atlantic Ocean*, all laid down in their respective relative positions, and distinguished by their appropriate names.

UPON looking into Governor Pownall's Topographical description of the Middle British Colonies, published in 1776, I find that he describes the Rivers having their sources in the Highlands and running Southerly, as "falling into the Bay of Fundy, or into the Main Ocean."

How then does the locality of the North West Angle of Nova Scotia, and of the second line forming this Angle, as claimed by the Americans, agree with the *expressions* of the Treaty?

THE Treaty in terms requires that the Angle shall be formed by *Highlands*, and the *Highlands*, afterwards mentioned in the Treaty, along which the second line of the Angle is to run, are those which divide Rivers that fall into the *Atlantic Ocean*.

THE point claimed by the Americans as the North West Angle, divides the Metis, a River falling into the River St. Lawrence, from a branch of the Restigouche, a River falling not into the Atlantic Ocean, but into the Bay of Chaleur, which Bay empties into the Gulph of St. Lawrence. The line forming the second line of the North West Angle, divides Rivers falling into the River St. Lawrence, first from the branches of the same River Restigouche, and then from the branches of the River St. John, a River falling not into the Atlantic Ocean, but into the Bay of Fundy, before it reaches the sources of the Penobscot, the Kennebec, and the Androscoggin, which are the only Rivers which can be considered as falling into the Atlantic Ocean, according to the signification of that term in the Treaty.

BUT it will be said, if this be the meaning of the Treaty, no point in the due North Line running from the source of the St. Croix, will immediately divide Rivers, which according to this construction are Rivers intended to be divided by the Boundary described in the Treaty. Any point in this line, South of the St. John, will divide the St. John from the St. Croix, both of them Rivers falling into the Bay of Fundy; any point, North of the St. John, and South of the Restigouche, will divide the St. John falling into the Bay of Fundy, from the Restigouche falling into the Bay of Chaleur; and any point North of the Restigouche, where the American Claim places the North West Angle, will divide the Restigouche falling into the Bay of Chaleur, from Rivers emptying into the River St. Lawrence, if upon an accurate survey of the due North Line it shall be found actually to intersect any River falling into the River St. Lawrence. For I understand that the present survey of this North Line is not considered as a precisely accurate one, having been run only as an Exploring Line, to serve as a basis for future operations.

I admit the consequence; but I maintain, that it is much more consistent with a literal interpretation of the Treaty, than the assumption on the part of the Americans, which confounds the distinctions so clearly made between the Atlantic Ocean, and the Bay of Fundy and the Gulph of St. Lawrence, and makes the first to include the two latter, although the three are distinctly and separately named. Moreover, the interpretation of the terms of the Treaty, which I consider the obvious one, fully accords with the

true spirit and intent of the instrument in the designation of this part of the Boundary, as I think will hereafter clearly appear.

ANOTHER circumstance in which the location made by the Americans of the North West Angle, and of the second Line forming the Angle, does not comport with the *expressions* of the Treaty, is this—That at the Angle, and for by far the greater part of the extent of this second line, as claimed by the Americans, there is no appearance of HIGH LAND whatever. Such I am well informed is the fact, and this is evidently admitted by the American writers on the subject. They endeavour to obviate this objection by assuming that by the term “Highlands” in the Treaty, is not meant lands of any particular elevation, but only such lands as divide the sources of Rivers running in opposite directions; and as, upon the principle of gravity, a River will descend from its source to its mouth, so it follows that the lands at the sources of Rivers are necessarily *higher* than those at their mouths, and such lands at the sources of Rivers, will satisfy the terms of the Treaty in this respect. They therefore make their Line of Boundary to “*meander*” through the low meadows and swamps, which are found at the sources of the numerous Streams, around which they wind in every variety of direction, and assert this to be the line “ALONG THE HIGHLANDS,” intended in the Treaty.

To a man of plain understanding, unversed in the subtilities of diplomatic disquisition, the term “Highlands” would obviously convey the idea of Lands distinguished by their elevation above the Country which surrounds them. When the same term is used by the framers of a Treaty, which is to prescribe the line of demarcation between two Nations, the natural presumption becomes infinitely stronger, that their object is to describe a conspicuous boundary and barrier between the Territories which it is their intention to separate, and that they make use of the term upon the supposition that such a conspicuous and natural Boundary does in fact exist.

THIS leads me to inquire whether there is any foundation for such a supposition in this case. The fact is, that there is a conspicuous and well defined Ridge of HIGH LANDS, beginning from the Connecticut River, well known by the appellation of THE HEIGHT OF LAND, or THE LAND'S HEIGHT, in which the Rivers Androscoggin, Kennebec, and Penobscot, on the one side, and the River Chaudiere falling into the River St. Lawrence, on the other side, have their respective sources. This HEIGHT OF LAND was well known to exist at the time of, and long anterior to the Treaty of 1783; but the interior of the Country to the Eastward of it at the time of the Treaty of 1783, and long afterwards, was altogether unexplored, and the extent and course of it *to the Eastward*, was unknown. I have no doubt that the existence of this Height of Land, which it is observable forms a part of the Line in which both parties

in the present controversy are agreed, and is in itself a conspicuous and remarkable Line of Boundary, was the occasion of "Highlands" being introduced as a Boundary in the first instance in the Proclamation of 1763, which prescribed the limits of the Province of Quebec, and afterwards in the Treaty of 1783, which defined the Boundaries of the United States.

Thus far, I think the American Claim is not borne out by the expressions of the Treaty of 1783.

VERAX.

NO. III.

28th November, 1827.

IN my preceding remarks on the American Claim, I have been exact in confining myself to the literal sense of the words of the Treaty of 1783, because our adversaries studiously hold out, that on our side we rest altogether on our own vague notions of an *equitable* division of the Country, while the Treaty, in letter as well as in spirit, is obviously and entirely with them. The spirit and true intention of the Treaty will form a more prominent topic of my future observations.

BEFORE proceeding farther, I will state what I understand to be the *British Claim*, with regard to the North West Angle of Nova-Scotia.

THIS Claim places the Angle at the point in the line running due North from the source of the St. Croix, which meets the Highlands at or near MARS HILL; and according to this Claim, the Angle is formed by a line running from the North Westernmost head of Connecticut River, the second station in the Boundary, along the *Highlands which divide the River Chaudiere and its several branches, this being a River falling into the River St. Lawrence, from the Rivers Androscoggin, Kennebec and Penobscot; this line being continued along the Highlands in that quarter in such manner as to leave all the branches of the Androscoggin, Kennebec and Penobscot, to the Southward of the line, and within the United States, until it meets the line drawn due North from the source of the St. Croix, at or near Mars Hill. The point in the due North line thus claimed on our part as the North West Angle of Nova-Scotia, is about 40 miles from the source of the St. Croix, and about the same distance within or to the Southward of the place where this line is in its prolongation made to cross the River St. John.

* These Highlands form the "HEIGHT OF LAND" mentioned in my last Letter.

It will be remembered, that the interior line of Boundary now in dispute, is declared by the Treaty to pass along Highlands. These Highlands are described as dividing certain Rivers. In order, therefore, to determine the course and direction of the line along the Highlands, it is obviously necessary to ascertain the Rivers which are to be divided.

FROM the statement I have made of the British Claim, in this, and of the American Claim, in my last Letter, it appears, if these statements be correct, that the parties agree in considering *the Androscoggin*, *the Kennebec*, and *the Penobscot*, as Rivers falling into the *Atlantic Ocean*, within the meaning of the treaty, and consequently as Rivers intended by the treaty to be divided by the line of Boundary along the Highlands from Rivers falling into *the River St. Lawrence*. The American claim, in addition to the three Rivers above named, considers *the St. John* and *the Restigouche*, as Rivers intended to be divided from Rivers falling into the *St. Lawrence*, by this line of Boundary. The question then resolves itself into this, whether *the St. John*, which has its mouth in the *Bay of Fundy*, and *the Restigouche*, which has its mouth in the *Bay of Chaleur*, are Rivers contemplated in the treaty, as falling into the *Atlantic Ocean*, and to be divided by the Boundary therein described, from Rivers that empty themselves into the *River St. Lawrence*. It may not be useless distinctly to remark, that I consider the terms "have their mouths," "empty themselves," and "fall," when applied to Rivers, to be obviously synonymous.

THE provisional articles of November, 1782, which afterwards formed the Treaty of 1783, have the following preamble, "Whereas as *reciprocal advantages* and *mutual convenience*, are found by experience to form the only permanent foundation of peace and friendship between States, it is agreed to form the articles of the proposed Treaty on such principles of *liberal equity* and *reciprocity*, as that partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse between the two countries may be established, as to promise and secure to both perpetual peace and harmony."

THESE things being premised, I will proceed to state the reasons why I do not consider the *St. John* and the *Restigouche*, as Rivers intended by the Treaty to be divided by the line of Boundary along the Highlands from Rivers falling into the *River St. Lawrence*.

MY first reason is, that these Rivers do not fall into the *Atlantic Ocean*; the *St. John* having its mouth in the *Bay of Fundy*, and the *Restigouche* having its mouth in the *Bay of Chaleur*, neither of which Bays are included in the *Atlantic Ocean*, according to the signification of that term in the treaty of 1783—a point upon which I have sufficiently enlarged in my last letter.

ANOTHER reason is—That these Rivers empty themselves within the British Territories, far to the Eastward of the Eastern limits of the United States. The St. Croix is the Eastern limit of the United States on the Sea-coast. In the meridian of the source of this River, the Treaty places the North West Angle of Nova-Scotia, the Eastern limit in the interior, and the commencing point of the Boundary. The line of Boundary proceeds *Westward* along the Highlands which divide, &c. FROM the North West Angle of Nova-Scotia to the North Westernmost head of Connecticut River. It is the manifest intention of the Treaty in *this part* of the Boundary *along the Highlands* to divide Rivers at their sources, and thereby to leave to each power the whole extent of the Rivers emptying within its own Territory. This rule is agreeable to the usage of nations,* and to the principles of liberal equity, reciprocal advantage, and mutual convenience, on which the Treaty is professedly founded. The only Rivers which the framers of the Treaty could have had it in their contemplation to divide at their Sources by the line along the Highlands, are those which empty themselves within the limits of this line, that is, as the line proceeds from East to West, between the meridians of the St. Croix, Eastward, and of the head of the Connecticut, Westward. The Rivers which empty themselves at the Sea-coast or Southward, between these meridians, empty themselves within the Territories of the United States, and are all secured to that power, for their whole extent up to their sources, by the line of Boundary as acknowledged by the British Claim. Can it be conceived that the framers of the Treaty intended by a Boundary founded on the principle of dividing Rivers at their sources, to cut off from Great-Britain large portions of such great Rivers as the St. John and the Restigouche, which empty themselves within her Territories, so far beyond the limits of the United States, while the whole extent of all the Rivers emptying themselves within the Territories of these States, are secured to them by the same Treaty? I think that such an effect of the Line described in the Treaty, was never in the contemplation of the framers of it, and that it would require a description of Boundary, expressed with such force and precision as to be perfectly free from doubt or ambiguity in all its parts, to induce a belief that such is the intention of the treaty. Whereas this principle of leaving to each power the whole extent of the Rivers that empty themselves within their respective Territories, is in strict accordance with the express description of the

* In "The Memorials of the English and French Commissaries, concerning the limits of Nova-Scotia or Acadia," London edn: 1755, p. 184, we find this principle stated by the French Commissaries. The following is a translation of what they say on the subject: "In such cases, the most usual and most convenient rule is to extend the limits in the interior Country to the sources of the Rivers that empty themselves upon the coast, that is to say, that each nation should have upon its own side the appurtenant Waters; and this rule was adopted at the peace of the Pyrenees, in fixing the limits between France and Spain."

Rivers intended to be divided, namely Rivers falling into the *Atlantic Ocean*, distinguished in the Treaty from the *Bay of Fundy* and the *Gulph of St. Lawrence*.*

On this point, of the true intention of the Treaty of 1783, it will be important, and it is a matter curious in itself, to trace the history of this Treaty, as it relates to Boundary.

In the "SECRET JOURNALS OF THE OLD CONGRESS," published in Boston in the year 1820, by order of the Government of the United States, we find the original draft of the Article of the Treaty which defines the Boundaries of the United States. It is of so early a date as the 14th August, 1779, and is contained in the instructions to the Commissioner to be appointed to negotiate a Treaty of Peace with Great-Britain.—The Article of these Instructions, to which I refer, is this:†

"THE Boundaries of these States, are as follows, viz:—These States are bounded North by a line to be drawn from the North West Angle of Nova-Scotia, along the Highlands which divide those Rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the North Westernmost head of Connecticut River." The Boundary from this point to the St. Lawrence, is the same as in the Treaty; from the St. Lawrence, the Boundary varies from the Treaty, until it reaches the Mississippi. The Southern Boundary is the same as in the Treaty, and is terminated by a line "down along the middle of St. Mary's River to the Atlantic Ocean." The Eastern Boundary is thus: "East by a line to be drawn along the middle of St. John's River, from its source to its mouth in the Bay of Fundy; comprehending all Islands within twenty leagues of any part of the Shores of the United States, and lying between lines to be drawn due East from the points where the aforesaid Boundaries between Nova-Scotia on the one part, and East Florida on the other part, shall respectively touch the Bay of Fundy and the Atlantic Ocean."

THESE instructions farther contain a direction, that if "the Eastern Boundary above described cannot be obtained," provision may be made for adjusting the same by Commissioners.

On a subsequent occasion, on the 16th August, 1782, for this matter appears to have been repeatedly under the consideration of

* In apparent objection to this principle, it is stated by the American writers, that the due North line from the source of the St. Croix, crosses some smaller Streams, tributary to the great River St. John, before it reaches the point claimed as the North West Angle of Nova-Scotia, at Mars Hill. To this objection, I would apply the Common Law maxim, *de minimis non curat lex*. The heads of these Streams are too insignificant to bear any weight in the discussion of such a controversy as this. The course and extent of the Great Rivers are the objects in view. In all probability, an actual survey of a line of Boundary along Highlands dividing Rivers would for the convenience of all parties, be carried direct from height to height, and cut off heads of Streams as considerable as those tributary to the St. John, crossed by the North line before reaching Mars Hill.

† Secret Journals of the Old Congress," vol. II. p. 225.

the Congress, we find in a Report of a Committee, the following clause:* "It is to be observed that when the Boundaries of the United States were declared to be an ultimatum, it was not thought advisable to continue the War *merely to obtain Territory as far as the St. John's River*; but that the dividing line of Massachusetts and Nova-Scotia was to be consigned to future settlement."

It appears, that the late Mr. Adams, one of the Plenipotentiaries on the part of the United States, who negotiated the Treaty of 1783, was examined as a witness before the Commissioners for ascertaining the true St. Croix, under the Treaty of 1794, and in answer to the question, "What Rivers were claimed to, or talked of by the Commissioners" (who formed the Treaty of 1783) "on either side, as a proposed Boundary, and for what reason?" stated as follows, "The British Commissioners first claimed to Piscataqua River, then to Kennebec, then to Penobscot, and at length to St. Croix, as marked on Mitchell's Map. One of the American Commissioners at first proposed the *River St. John*, as marked on Mitchell's Map; but his colleagues showing that as the St. Croix was the River mentioned in the Charter of Massachusetts Bay, they *could not justify insisting on the St. John as an ultimatum*, he agreed with them to adhere to the Charter of Massachusetts Bay."†

From these documents it appears, that the North West Angle of Nova-Scotia, as originally claimed by the United States, at the time of making the Treaty of 1783, was placed at the source of the River St. John; *the middle of which River, from its source to its mouth in the Bay of Fundy*, was then claimed by them as their Eastern limit. The distinction between the *Atlantic Ocean* and the *Bay of Fundy*, is also introduced and carefully preserved in this original *projet* of the Boundary. They make the line to proceed from the source of the River St. John *Westerly* along the Highlands, which divide, &c.: which Highlands, described in this *projet*, are no other than the HEIGHT OF LAND, I have before alluded to, and divide no Rivers, but the branches of the Chaudiere falling into the *River St. Lawrence*, and the Penobscot, Kennebec, and Androscoggin, falling into the *Atlantic Ocean*.

THIS most extended claim of the United States, before the Treaty of 1783, does not cross the River St. John, and does not include any territory *North* and *East* of that River.

THE Congress do not deem it advisable to continue the War for the purpose of obtaining Territory, even to the *Saint John's River*.

* "Secret Journals of the Old Congress," vol. III. p. 171.

† I find this in the New-York "Aurion," July 15th, 1826, and in the Appendix to Mr. Henry Bliss's very able Pamphlet on the Claims and conduct of the United States, respecting their North Eastern Boundary, published in London, 1826. In each of these publications, there is a map, which it may be useful to refer to for illustrating the present controversy.

THE claim, to the middle of the River St. John, as a Boundary, from its mouth to its source, is at the time of the negotiation of the Treaty of 1783, expressly relinquished by the American negotiators, according to the evidence of one of them, as not justifiable.

THE plain inference from these premises is, that it was in the contemplation of the negotiators of the Treaty of 1783, by the Line of Boundary, as they ultimately described it, to leave within the Territories of His Majesty the whole of the River St. John from its mouth to its source. This inference is infinitely stronger with respect to the Restigouche, which, from its remote situation to the Eastward, could never have been even adverted to, as a River that could in any part of its extent, be a River of the United States. And this inference is the only one which accords with the principle of the line of Boundary along Highlands dividing Rivers at their sources, advanced by the Congress, and preserved in the definitive Treaty, and that is to leave to each nation the whole of the Rivers emptying themselves within its own territory. The River St. Croix was finally agreed upon as the Eastern Boundary from its mouth to its source, and the North West Angle is then described to be formed in such a manner as will unquestionably leave to the United States, the whole extent of the Rivers up to their sources, which empty themselves within their Territories; and most righteously shall the same description be held to answer the corresponding purpose for Great Britain.

THE present claim of the United States would cut off from His Majesty's Territories, about 150 miles of the Main River St. John, from its source downwards, besides several large branches of this River, and the head waters of the Restigouche and its branches, for many miles in extent, would give these States upwards of 10,000 square miles of Territory, in the whole, and about 700 square miles more than their original and most extended Claim, which was relinquished at the time of negotiating the Treaty of 1783, to the St. John as an Eastern Boundary, from its mouth to its source, would have given them. Besides, it completely intercepts the communications between the remaining British Provinces; and would leave to His Majesty only a narrow strip of land on the banks of the St. Lawrence, in some places not more than ten miles distant from that River. Are circumstances like these to be reconciled with the principles of liberal equity, reciprocal advantage, and mutual convenience, upon which it is solemnly declared that the provisions of the Treaty were finally adjusted?

VERAZ.

NO. IV.

5th December, 1827.

THE American writers, notwithstanding their alleged confidence in the treaty of 1783, call to their aid the designation of the Boundaries of the Province of Quebec, prior to that treaty. This leads me in this place, to a statement of these Boundaries—

By the Proclamation of 1763, the Government of Quebec is declared to be “bounded on the Labrador Coast by the River St. John, and from thence by a line drawn from the head of that River, through the Lake St. John to the South end of the Lake Nepissim, from whence the said line crossing the River St. Lawrence and the Lake Champlain, in 45 degrees of North latitude, passes along the Highlands which divide the Rivers that empty themselves into the said River St. Lawrence, from those which fall into *the Sea*, and also along the North coast of the *Baye de Chaleurs*, and the coast of the Gulph of St. Lawrence to Cape Rosieres,” &c. &c.

By the act of Parliament, 14th Geo. III. cap. 83, “for making more effectual provision for the Government of the Province of Quebec,” this Province is declared to be “bounded on the South by a line from *the Bay of Chaleurs* along the Highlands which divide the Rivers that empty themselves into the River St. Lawrence, from those which fall into *the Sea*, to a point in forty-five degrees of Northern latitude on the Eastern bank of the River Connecticut,” &c. &c. &c.

ALTHOUGH these Boundaries are thus described, yet the actual locality of the Southern Boundary of the Province of Quebec, which it is acknowledged formed the Northern Boundary of these Seaboard Provinces, was at the time of the treaty of 1783, in the interior of the Country, to the Eastward of the HEIGHT OF LAND before spoken of, altogether unexplored and unknown. The HEIGHT OF LAND was indeed at that time well known. Mr. Pownall, in his Topographical description of the Middle Colonies, before referred to, speaks of a survey he had caused to be made, while Governor of Massachusetts Bay, of the route from the heads of the Kennebec to those of the Chaudiere; and by this route General Arnold had marched to Quebec in 1775. The sources of the Rivers there running in opposite directions to the Atlantic Ocean and the River St. Lawrence, were known to be contiguous, and to be separated by elevated and conspicuous HIGH LANDS, forming a mountainous barrier, very fit to be a Boundary between two Nations; and the inference is clear from the expressions of the treaty, that the framers

of the treaty, from these facts, which they must have known, considered that a Boundary of the same character would be found to the Eastward.*

WITH these materials before them, how do the framers of the treaty of 1783, proceed to form the Boundaries of the United States? "From the North West Angle of Nova-Scotia, viz: *that Angle which is formed by a line drawn due North from the source of the St. Croix River to the Highlands.*" This Angle, the commencing point of the Boundary, is not referred to as a known and fixed limit, the situation of which is ascertained merely by giving its name; but the mode of forming it is expressly described. There is also a distinct definition of the Angle, before the Boundary proceeds farther. The Angle is formed by "THE HIGHLANDS." The Boundary proceeds FROM this point "along the said High-lands which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the *Atlantic Ocean* to the North Westernmost head of Connecticut River." From this peculiar phraseology of the Treaty, it is a fair inference that the circumstance of the Highlands dividing Rivers is not intended to be a part of the definition of "the Highlands" which form the Angle, but is introduced in the subsequent description of the Highlands, along which the line is to pass, with the view of securing to the United States the sources of those Rivers which empty themselves within their territories. For we must bear in mind, that the particular point, to which the framers of this instrument directed their attention, was to define the limits of *the United States*, to describe with precision that part of the whole territory before under British dominion, which his Majesty was by this instrument to relinquish to these States; his Majesty's right to all that part of the territory not so relinquished, remaining undisturbed. But what Rivers are expressed in this subsequent description of Highlands, as those which are to be divided from Rivers emptying themselves into the River St. Lawrence? "Those which fall into the *Atlantic Ocean.*" Is this the description of Rivers mentioned in the Proclamation of 1763, or in the Act of Parliament of 1774? The Rivers mentioned in these descriptions of Boundary, are "those which fall into *the Sea.*" Is it to be believed, that the acute and sagacious men in the old Congress, who year after year, weighed and sifted every word in the original *projet* of 1779, or those who, on the part of the United States, afterwards negotiated the treaty of

* This inference is strongly corroborated by the following extracts from Pownall's Topographical Description, p. 15, "Connecticut River rises in North Latitude, $45^{\circ} 10'$ at the *Height of Land* in Longitude 4° East of the Meridian of Philadelphia"; and p. 24, "All the heads of the Kennebaeg, Penobskaeg, and Passam-aquada Rivers, are on the *Height of the Land* running EAST NORTH EAST." It is worthy of remark that this is about the course in which MARS HILL lies from the North Westernmost head of Connecticut River.

1783, did not perceive any difference in the extent of the signification of the terms "Sea" and "Atlantic Ocean;" that they had not any precise meaning, in substituting in their description of Rivers, the latter for the former term? Is this to be believed, when these very men, in the same instrument expressly contradistinguish the "Atlantic Ocean," a part of the Sea, from the "Bay of Fundy," also a part of the Sea, by describing Rivers and points of Boundary as respectively falling into and touching these different parts of the Sea? Is the inference to be resisted, that these men, by narrowing the description of "Rivers falling into the Sea" to "Rivers falling into the *Atlantic Ocean*," clearly indicate that in so doing they had in view such Rivers, and such Rivers only, as fall into that part of the Sea which they themselves have designated as the *Atlantic Ocean*; namely, that part of it which lies to the *Westward* of the *Bay of Fundy*, which part they have expressly contradistinguished from that Bay;* the range of their view in this respect being limited to the *Westward* by the meridian of the head of the Connecticut River, the point where this line of Boundary terminates? The Rivers which, and which only, I thus think it unquestionable that these men, by the expressions they have used, had in view in describing this part of the Boundary, are the Rivers which do actually empty themselves on that part of the Sea Coast which lies within the limits of the United States, as defined by the Treaty; and which, and which only, I think it is equally clear they meant to secure to their Country, up to their sources, by this part of the Boundary, as they have described it in the interior. It cannot be denied that these were the only Rivers which the Congress in 1779 had in view, as those to be divided by the line of Boundary proceeding Westward, when they placed the North West Angle of Nova-Scotia at the source of the St. John; and the definitive Treaty preserves exactly the same expressions, as those contained in the

* The American writers contend that in an instrument "drawn with so much care and reflection," as the Treaty of 1783, if the framers of it had intended an exception, they would have expressly excepted the Rivers falling into the *Bay of Chaleur* and the *Bay of Fundy*, or that "some definite point might have been adopted on the shores of the Atlantic."—By limiting the extent of the term "Atlantic Ocean," in their understanding of it, which with so much care and reflection the framers of the Treaty have done, they have rendered any such exception unnecessary; by contradistinguishing "the Atlantic Ocean" from the "Bay of Fundy," they have in fact adopted a definite point on the Sea-coast, within or to the Westward of which the Rivers were to empty themselves, that they contemplated as being divided at their sources by the line of Boundary in the interior, namely, the Western extremity of the Bay of Fundy. The Rivers to the Westward of this Bay, affected by this line of Boundary, fall, in the contemplation of the Treaty, into the Broad Atlantic. The Bay of Fundy being expressly named as distinct from the Atlantic, places this Bay in a point of view altogether different, if there were no other circumstances to distinguish it in this respect, from the Penobscot Bay or other minor Bays on this part of the Coast, into which these great Rivers may fall. I will not quarrel with another position of the American writers, that "the Treaty divides all the Rivers or Streams into two classes, to wit, such as fall into the St. Lawrence, and such as fall into the Atlantic Ocean; all of course, so far as they have any connexion with the Treaty, fall within the one or the other of these classes." The Rivers which do not fall into the Atlantic Ocean, according to the meaning of the Treaty, have no connexion with the Treaty.

original *projet* of the Congress, in describing the Rivers which are to be divided by this line of Boundary.

THE conclusion I deduce from all this, is, that a line drawn from the North Westernmost head of Connecticut River, along the well known HEIGHT OF LAND, and continued to the Eastward along such High Lands as lie at the sources of the Rivers falling into the Atlantic Ocean, according to the signification of that term in the Treaty, until such line shall intersect the line running due North from the source of the St. Croix, will at this point of intersection form the North West Angle of Nova-Scotia, truly intended in the Treaty.

IN treating of the former Boundaries of the Province of Quebec, under the Proclamation of 1763, the American writers refer with great confidence to Maps, published in England in 1775 and 1783, in which, if I understand them, for I have not seen the Maps referred to, the Southern line of the Government of Quebec, is placed to the Northward of the sources of the *St. John*, and the Western line of Nova-Scotia is made to cross this River before it meets this Southern line of Quebec, which as before stated, was the Northern line of Nova-Scotia. I imagine that in these Maps, this Southern line of Quebec and Northern line of Nova-Scotia, is not placed to the Northward of the sources of the *Restigouche*, where the present American claim places the North West Angle of Nova-Scotia. A line passing round the sources of all the branches of the *Restigouche*, including the *Metapediac*, (which is the line according to the American claim) will never reach the *Bay of Chaleur*, as the *Restigouche* empties itself at the head of this Bay; and it is at the *Bay of Chaleur*, that the line along the Highlands is made to terminate by the description of Boundary, both in the Proclamation of 1763, and the Act of Parliament of 1774.* The line now claimed by the Americans in this quarter, *can not*, therefore, be the Southern boundary of the former Province of Quebec. A glance at any Map of the Country will illustrate my meaning in this particular, and will also shew that a line drawn from the Bay of Chaleur to Connecticut River, in 45 degrees of North latitude, the line of the Proclamation and Act of Parliament, will very well comport with the line of the present British claim. But, in truth, the authority of the compiler of a Map, although he may be "Geographer to the King," tracing a line of Boundary according to his own notions of it, cannot be of any weight in a national controversy. I have seen a Map published in the United States, since the Peace of 1783, compiled by one of the Sovereign People, in which the Boundary is laid down accord-

* In the Commissions to the Governors of Nova-Scotia, subsequent to the Proclamation of 1763, the *Western extremity* of the Bay of Chaleur is mentioned as the point where this Southern Boundary of the Province of Quebec terminates.

ing to what are now considered as the extravagant pretensions of Great-Britain. The Maps spoken of by the American writers, published in 1775 and 1783, do not appear to have been even before the Negotiators of the Treaty; the only Map which they are stated to have referred to, being that of Mitchell, published in 1755.

As little weight is to be given to any remarks relating to the Provincial jurisdiction exercised by New-Brunswick, in the upper parts of the River St. John, which our adversaries surmise ought upon our own principles, to fall within the Province of Lower-Canada. Any acts or proceedings of the Provincial Governments, or of the officers or subjects of either nation, subsequent to the treaty of 1783, cannot have any bearing on the question now pending under that treaty. The fact however is, that the actual location of the Southern Boundary of Canada, in this quarter, was at the time of the treaty of 1783, and remains to this day, unsettled. It has been the subject of conflicting claims between the Governments of Canada and New-Brunswick, since the erection of the latter Province; and, if I am not misinformed, lands lying on the waters of the upper part of the St. John, are at this day held under titles derived from the Government of Canada, as well as from that of New-Brunswick.* But with the Inter-Colonial affairs of these Provinces, a Foreign Power surely cannot have any concern; and if it seeks support to its pretensions from a reference to any such circumstances, it betrays the weakness of its cause.

As I have before stated, no man at the time of the treaty of 1783, could have placed his finger upon any point in the Map, as the known North West Angle of Nova-Scotia, or have traced the actual location, for the greater part of its extent, of the Southern Boundary of the Province of Quebec. The framers of the Treaty, under these uncertainties, proceeded to define for themselves, the North West Angle of Nova-Scotia, and the rest of the Line of Boundary which is to ascertain and comprise the Territories of the United States, and to separate these territories from those remaining under the Sovereignty of Great-Britain.

THE North West Angle of the Treaty then, and that alone, must be the governing point of the present controversy.

VERAX.

* In the last City Gazette, (Nov. 25) there is an account of the proceedings of County Meetings on the Southern Shore of the St. Lawrence, below Quebec, relating to this very question of Boundary, predicated on the supposition that the Waters of the St. John, in that neighbourhood, are within the Province of Lower-Canada.

NO. V.

12th December, 1827.

As I intimated in my last Letter, if a line from the Connecticut River, where the description of the Boundary in this quarter, in the Proclamation of 1763, commences, be drawn in the first instance along the HEIGHT OF LAND, (acknowledged on all sides to be *dividing* Highlands as well under the Proclamation as the Treaty) and then be continued *Northerly* along the sources of all the Rivers falling into the River St. Lawrence, it will be carried to Cape Rosieres, without ever striking the Bay of Chaleur, which Bay is made both by the Proclamation and Act of Parliament, one extremity of the Line. Whereas a line drawn from the Connecticut along the HEIGHT OF LAND, and thence continued *Easterly* to the Western extremity of the Bay of Chaleur, will substantially correspond with the line claimed by Great Britain in the present controversy.* But this Quebec Boundary was never settled, and the looseness in the description of it, and the uncertainty of its location, are circumstances by no means unusual in designating Colonial Boundaries through an unexplored wilderness. They are not indeed of material import to Provinces under the dominion of one Empire, in which there is an acknowledged superintending authority, that can regulate affairs of this kind, as occasion may require, for the particular convenience of each, and the general good of the whole. The question assumes a different aspect, when it arises between the Sovereign Power of this Empire, and that of a neighbouring Foreign Nation, which have carefully described in a compact between them the line of demarcation, that is to separate their respective territories. In such a case, the inter-national compact alone can furnish the rule of decision.

To return then to the Treaty of 1783—Our adversaries make their strong hold in the description of the Eastern Line, which is thus, "East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly North to the aforesaid Highlands which divide the Rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence." Here, say they, it is evident that the North Line must be carried to the heads of the Streams which fall into the River St. Lawrence. But suppose, that the North

* A line along Lands dividing Rivers for its whole extent, is clearly not intended in this old Quebec Boundary. It must leave the *dividing Highlands* somewhere in order to strike the Bay of Chaleur, and the most natural course would seem to be to carry it from the HEIGHT OF LAND *Easterly*, in the general direction of this HEIGHT OF LAND to the Western extremity of that Bay.

Line when run with accuracy, should not strike any River that falls into the St. Lawrence, is it to be continued to the Bank of that River, and there form the North West Angle? No. In that case, we are to take "*the line* of the range of lands," from which the Rivers do fall into the St. Lawrence. So that even according to the American argument, circumstances may be such, that this condition cannot be fulfilled with literal accuracy, and the rule for forming the Angle, must be to ascertain the Rivers which the Treaty intends to be divided by the Line of Boundary along the Highlands. Let us suppose, however, that the North Line as at present explored, is accurate, and does strike the head of the River Metis, which falls into the St. Lawrence. When we look back on our course, we find, that we have crossed the St. John and the Restigouche; and in order to answer the conditions of the Treaty, upon this construction of it, we must consider these Rivers as falling into the Atlantic Ocean, and thereby make the Atlantic Ocean *to include* the Bay of Fundy and the Bay of Chaleur; whereas it has been abundantly shewn, that in the Treaty the Atlantic Ocean is spoken of as a part of the Sea, which meets the Coast Westward of the Bay of Fundy, and is *exclusive* of both the Bays above named. To fulfil the American condition then, a different and a more extended signification must be given to the term "Atlantic Ocean," when speaking of Rivers descending to the Sea Coast, than that which it undeniably bears in the same instrument when speaking of the Sea-coast itself; nay, than common usage, and the precision evinced in substituting this term for one of far more vague and general import will justify.* Let me ask, what purpose connected with the spirit of the Treaty, or the objects which the framers of it may be fairly considered to have had in view, is this expanded and inconsistent version to answer?

BUT, say the Americans, it is the literal import of the description of the Eastern Line, that this Line is to terminate at Highlands, which, *at this terminating point*, (i. e. at the North West Angle) do actually divide the Rivers intended by the Treaty to be divided; and this cannot be done without extending this due North Line to the heads of the Rivers falling into the St. Lawrence, and making the St. John and the Restigouche to be Rivers falling into the Atlantic Ocean.

To this I answer, that this last circumstance is conclusive to shew, that the American construction is erroneous, and that we shall

* It will be borne in mind that I here refer to the description in the Treaty of the mouth of St. Mary's River "in the Atlantic Ocean," and of the mouth of the St. Croix, "in the Bay of Fundy," and of these Boundaries on the Sea-coast "respectively touching the Bay of Fundy and the Atlantic Ocean"—and to the substitution of "the Atlantic Ocean," in the original *projet* of 1779, preserved in the Definitive Treaty, for "the Sea"—the term which occurs in the description of the old Quebec Boundary.

not find in the due North Line any point dividing at their sources the Rivers which it is the intention of the Treaty so to divide.

"WE must," says Vattel in his Rules for the Interpretation of Treaties, "we must consider the whole discourse together in order perfectly to conceive the sense of it, and to give to each expression not so much the signification which it may individually admit of, as that which it ought to have from the *context* and *spirit* of the discourse."

READING then the description of the Eastern Boundary, as this rule requires, and as its own language naturally implies, it will be, "East by a Line to be drawn along the middle of the River St. Croix, from its mouth in the *Bay of Fundy* to its source, and from its source directly North to the aforesaid Highlands which," in their course Westward, "divide the Rivers that fall into the *Atlantic Ocean* from those which fall into the River St. Lawrence."

THIS will be found still more applicable to the language of the first part of the Treaty, "From the North West Angle of Nova Scotia, viz. that Angle which is formed by a line drawn due North from the source of St. Croix River to the *Highlands*, along the said Highlands which," in their course Westward, "divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the *Atlantic Ocean*."

THIS reading conforms to the *context*, and preserves the consistency of the Treaty, by giving to the term "*Atlantic Ocean*," its appropriate meaning throughout. It will alone fulfil the *spirit* of the instrument, in this part of the Boundary, by securing to both parties the Rivers to their sources, which empty themselves within their respective Territories. It will be consistent with the knowledge of the Country existing in 1783, by carrying the Boundary along the Highlands, at that time well known, which divide the sources of the Penobscot, Kennebec and Androscoggin, from those of the Chaudiere, which Highlands there is every reason to suppose, and the phraseology of the Treaty indicates, that the framers of it had specifically in view. It will accord with the history of the Treaty, which shews that the original and most extended claim of the United States, expressly relinquished by their Plenipotentiaries in 1783, did not extend to the North and East of the St. John. It will not, if the old Boundaries of the Province of Quebec, notwithstanding their uncertainty, be invoked into the discussion, be found opposed to the description of these Boundaries, as the present American Claim demonstrably is. Nor will it be inconsistent with the general views of reciprocal advantage and mutual convenience professed in the Treaty; which the American pretensions completely frustrate, by extending their dominion into the heart of our Territories, cutting off large portions of our great Rivers, intercepting our communications, destroying every semblance of a natural frontier,

and taking up a controlling position on the verge of the St. Lawrence.*

HAVING said thus much on the construction of the Treaty, I am now led to inquire whether there are any *High Lands*, properly so called, on the Lines claimed by the respective parties in this controversy. As this is a question of fact, it is to be determined by testimony, not by reasoning.

WITH regard to the Line claimed by the Americans, I believe the fact to be, as I have formerly stated, and as is virtually admitted by their writers, that there are no prominent High Lands either at the Angle, or along by far the greater part of the Line. These writers we have seen endeavour to supply this deficiency by a deduction from the physical laws of Nature, that the land is necessarily higher at the sources of Rivers than at their mouths.

THE British Claim places the North West Angle at Mars Hill. This is the first Highland, of distinct and conspicuous elevation, intersected by the line running due North from the source of the St. Croix. I have been informed that the HEIGHT OF LAND, so often mentioned, was traced by the Surveyors under the late Commission, extending *Easterly* for many miles, in a distinct and unbroken chain, and then in a succession of mountainous ridges, fully answering the natural and obvious meaning of the term "Highlands," in the general course and direction of the HEIGHT OF LAND, to the due North Line at Mars Hill.

THIS information I find to be confirmed by Greenleaf's "Statistical View of the District of Maine," published in Boston in 1816, before the separation of that District from Massachusetts, and addressed to the Legislature of the latter State. This author divides the District (including within it, according to the pretensions of his Country, all the disputed Territory) into two Sections, "*the mountainous, and the moderately hilly.*" He goes on to say,† "With the exception of a small tract at the Northern extremity, and some detached elevations along the central part of the North Western Boundary, the mountainous part of the District may be included within an irregular line drawn from the line of New-Hampshire, not far from Saco River; thence proceeding North-easterly and crossing Androscoggin River near Dixfield, Sandy River above Farmington, Kennebec River above Bingham, the West branch of the Penobscot at the lake Pemmidumpkok, and

* It will be remarked on an inspection of a Map of the Country, that the Line claimed on the part of Great-Britain, not only leaves to the United States all the Rivers to their sources, emptying within their Territories, but divides the Tract of Country lying between the St. Lawrence and the Atlantic nearly into two equal parts, by running nearly along the middle of it, which certainly comports with the principles of equity and mutual advantage, and if Rivers were out of the question, would on these principles, be a fair mode of settling the question.

† Page 18.

"to the East branch of the Penobscot, near the mouth of the Was-
 "sattaquoit; thence *North so far as to include the heads of the Aroos-*
 "*took*;* thence *Southwesterly to the head of Mooshead Lake, and*
 "*thence Westerly to the Boundary of the District, near the sources of*
 "*the De Loup*.† The greatest length of this Section is *from South*
 "*West to North East*, about 160 miles, its greatest breadth about
 "60 miles, and it comprises about one seventh part of the District.
 "No observations have been made to ascertain and compare the
 "height of the different elevations in this Section; but from esti-
 "mates which have been made on the falls of the Rivers proceeding
 "from different parts of it, and from the much greater distance at
 "which the mountains in the *Western part* are visible, it is evident
 "that the Western, and particularly the Northwestern part is much
 "higher than the Eastern; and the Section in its whole extent, may
 "be considered as presenting THE HIGHEST POINTS OF LAND between
 "the Atlantic and the St. Lawrence. The remainder of the District,
 "with the exceptions before noticed, may be considered generally
 "as a moderately hilly country, though not uniformly so in all its
 "parts."

It is we have seen, at THE HIGHLANDS at MARS HILL, that
 Great-Britain claims the North West Angle of Nova-Scotia, and
 through the mountainous region described by Mr. Greenleaf, "pre-
 "sented the highest points of Land between the Atlantic and the
 "St. Lawrence," including the Highlands which divide the sources
 of the Penobscot, Kennebec, and Androscoggin, from those of the
 Chaudiere, that she traces her line of Boundary; and it is to be ob-
 served, that in the Map of the same author, accompanying his book,
 there are not laid down, as there are not described in the book, and
 do not in fact exist, on the line of the American Claim, before it
 unites with that of Great-Britain, any *High Lands*, but those on
 the Timiscouata Portage, leading from the Lake of that name to the
 St. Lawrence.

I have thus completed the purpose I set out with, and stated
 the views I entertain of this very important subject; on which, every
 man will of course form his own opinion. The result in my mind
 is, that the Line claimed by the United States on the present occa-
 sion, is, indisputably, not the true Line of the Treaty of 1763; and
 that we must fall back on the principles of the British Claim, which
 will alone fulfil the spirit and conform to the letter of the Treaty.

Thus much at least will be acknowledged, that it is not, as our
 adversaries assert, merely because Great-Britain "*will have*" the
 Territory, that she claims it; but we, on our side of the Lines, can
 discern *reasons* for the pretensions which, it is understood, our Go-

* This River is called in British Maps, the *Restook*.

† A Branch of the Chaudiere.

vernment maintains. Nor is it on our possession, in point of fact, that we rest our right to hold this Territory. But this possession, which the King's Government has ever held, and in which it finds itself at the time of the controversy, will, I trust, not be relinquished, until the right is decided against us.

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